

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

THE STATE OF LOUISIANA,
By and through its Attorney General, JEFF
LANDRY,

THE STATE OF MONTANA,
By and through its Attorney General, AUSTIN
KNUDSEN,

THE STATE OF ARIZONA,
By and through its Attorney General, Mark
Brnovich, et al.,

PLAINTIFFS,

v.

XAVIER BECERRA, in his official capacity as
Secretary of Health and Human Services; et al.,

DEFENDANTS.

CIVIL ACTION NO. _____

DECLARATION OF
CATHERINE MOLCHAN DONALD

I, CATHERINE MOLCHAN DONALD hereby declare:

Background and Experience

1. I make this declaration based on my personal and professional knowledge and experience, information available to me in my position in public service, and publicly available information.
2. I am the Chief Financial Officer for the State of Alabama Department of Public Health (“ADPH”, or the “Department”).
3. As the Chief Financial Officer of ADPH, I am responsible for overseeing the budgets and financial operations of ADPH. As an ADPH executive, I have been involved with the Department’s response efforts to the COVID-19 pandemic. Among other things, one of my primary duties is to assess the ways the Department’s actions will impact its financial health.

The Alabama Department of Public Health

4. ADPH is an agency of the State of Alabama and receives funding from the State.
5. ADPH is the state agency primarily responsible for serving Alabamians’ public health needs.
6. ADPH is subject to the CMS vaccine mandate as a provider of home health services.
7. I have reviewed the CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (the “CMS Mandate”). I understand that the CMS Mandate requires most Medicaid and Medicaid providers to, in turn, require their covered employees to be “fully vaccinated” by January 4, 2022.
8. State law prohibits ADPH from soliciting its employees’ vaccination status. *See* Ala. Act. 2021-493 § 1(a). However, about half of all Alabamians have not received the COVID-19 vaccine, and it is reasonable to assume that roughly the same proportion of ADPH employees have not received the vaccine either.

9. ADPH has over 1300 employees that would be considered provider employees subject to the CMS mandate.
10. ADPH stands to lose funds if it does not comply with CMS Mandate.
11. ADPH may also be impacted by the CMS mandate in its role as the state surveying agency of Medicaid and Medicare providers.

The Impact of the CMS Mandate on ADPH

12. We estimate that roughly 40% of our covered unvaccinated employees will resign if we are forced to enforce the CMS Mandate.
13. Losing employees due to the CMS mandate jeopardizes the ability of ADPH—and, accordingly, of the State—to perform its home-health services to a particularly vulnerable population.
14. Because the CMS Mandate requires all covered employees to be fully vaccinated by January 4, ADPH would need all impacted employees to begin the vaccination process in early December for the Pfizer and Moderna vaccines and by late December for the Johnson and Johnson vaccine.
15. ADPH is responsible for surveying and ensuring compliance of hundreds of Medicare and Medicaid providers. Therefore, for the providers under the oversight of ADPH, it will fall to ADPH to monitor and confirm compliance with the CMS vaccine mandate. This will introduce a heavy and time-sensitive burden on the surveying staff, to the detriment of its other duties and responsibilities. Further, it would be difficult in today's labor market to recruit, hire, and train additional surveyors for this temporary, yet difficult, work.
16. The federal government's deadlines have made compliance extremely difficult, if not impossible.
17. If ADPH does not comply with the CMS Mandate, then the Department will lose significant funding for its home health program and will possibly lose funding for its health provider standards program. If ADPH complies with the CMS Mandate, it stands to lose a significant percentage of its workforce.
18. The CMS Mandate therefore forces ADPH to choose between losing funding and losing workers. As to its surveying responsibilities, ADPH will be forced to direct additional manpower to enforce the vaccine mandate on the state's providers, while diverting manpower away from its critical duties to ensure safe facilities. In either event, the CMS Mandate will render the Department less effective and will jeopardize the welfare of the Alabamians who benefit from ADPH's programs.

19. For the same reasons, the CMS Mandate will also diminish ADPH's capacity to defend Alabamians against COVID-19.

20. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Nov 15, 2021

Date

Catherine E. Donald

Catherine Molchan Donald
Chief Financial Officer
Alabama Department of Public Health